

**U.S. Department of Labor**

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**Issue Date: 19 August 2005**

Case No.: 2004-LHC-01960

OWCP No.: 02-130815

In the Matter of

**PIETRO BRUNETTI**  
Claimant

v.

**A.G. SHIP MAINTENANCE CORP.**  
Employer

and

**AMERICAN HOME ASSURANCE COMPANY**  
Carrier

Appearances:

Thomas R. Uliase, Esquire  
For Claimant

Robert L. Garelick, Esquire  
For Employer/Carrier

Before: **ROBERT D. KAPLAN**  
Administrative Law Judge

**DECISION AND ORDER**  
**AWARDING BENEFITS**

This proceeding involves a claim for benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901 et seq. (the "Act"), and the regulations promulgated thereunder. A hearing was held before me in Cherry Hill, New Jersey, on March 2, 2005. Employer and Claimant were granted additional time to take the depositions of Dr. Larry Frohman, Ms. Laurie Havassy, and Dr. Ronald L. Rosenberg. (T 12)<sup>1</sup> Claimant submitted the deposition testimony of Dr. Rosenberg on April 29, 2005. This transcript is herewith received into evidence as CX 22. Employer submitted the deposition testimony of both Dr. Frohman and Ms. Havassy on May 19, 2005. These transcripts are herewith received into evidence as EX 32 and EX 33, respectively. Both Claimant and Employer filed briefs on June 20, 2005.

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<sup>1</sup> The following abbreviations are used herein: "CX" refers to Claimant's Exhibits; "EX" refers to Employer's Exhibits; "T" refers to the transcript of the March 2, 2005 hearing.

I. STIPULATIONS AND CONTENTIONS OF THE PARTIES

The parties entered into the following stipulations (T 5-10; Clmt's Br. at 1-3; Emp's Br. at 3-5)

1. The injury that is the subject of this claim occurred on December 19, 2000, in New Jersey.
2. The claimed injury involved a neuro-ophthalmic problem.
3. This claim is covered under the jurisdiction of the Act.
4. An employer-employee relationship existed at the time of the claimed injury.
5. The parties are in dispute as to whether the claimed injury arose in the course and within the scope of employment.
6. Employer was timely notified of the injury.<sup>2</sup>
7. Claimant timely filed a Claim for Compensation with the United States Department of Labor.
8. The parties are in dispute as to whether Employer timely filed its Notice of Controversion with the United States Department of Labor.
9. Informal conferences were held on August 5, 2003 and February 10, 2004.
10. The parties are in dispute as to whether a permanent disability resulted from Claimant's injury, as well as the date of maximum medical improvement (MMI).
11. Employer has not provided benefits under § 7 of the Act.
12. Employer has not paid Claimant compensation under the Act.
13. Claimant's average weekly wage (AWW) is \$1,559.86.<sup>3</sup>
14. Claimant has not returned to his regular employment.

Claimant contends that he has a permanent total disability due to abnormal eye movements that are causally related to his nosebleed and acute hypertension occurring during the

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<sup>2</sup> Initially Employer disputed whether Claimant gave timely notice of the injury to Employer. However, at the March 2, 2005 hearing, Employer's counsel waived this issue. (T 9-10)

<sup>3</sup> Clmt's brief at 2; Emp's Br. at 5.

course and scope of his employment. (Clmt's Br. at 22-33) Claimant also argues that he is entitled to medical benefits under § 7 of the Act and should be reimbursed for unpaid medical expenses related to his work injury. (Clmt's Br. at 34-35)

Employer contends that Claimant's injury did not arise in the course and scope of his employment. (Emp's Br. at 14-20) Employer also posits, should I find Claimant's injury did arise in the course and scope of his employment, that Claimant is only partially disabled under the Act as it provided evidence that suitable alternative employment (SAE) is available. (Emp's Br. 21-23)

## II. ISSUES

The issues to be resolved are:

1. Whether Claimant's eye disorder is causally related to his covered employment;
2. Whether Claimant has reached MMI;
3. Whether Claimant is able to return to his usual job with Employer, and if not, whether Employer has demonstrated the availability of SAE such that Claimant is partially, rather than totally, disabled;
4. Whether Employer filed a timely Notice of Controversion;
5. Whether Employer is liable for past and future medical benefits related to Claimant's eye disorder, pursuant to § 7 of the Act.

## III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. Summary of the Evidence

Claimant provided testimony at the hearing and was also deposed by Employer's counsel on October 6, 2004. Claimant's testimony at the hearing reiterated much of the prior statements made during his deposition testimony.

Claimant was born on September 2, 1954, in Mola DiBari, Italy. He attended five years of elementary school and three years of junior high school before stopping at the age of 14 in order to help support his family. (T 20) After quitting school, Claimant helped his father who was a fisherman, and he also worked in his uncle's printing shop. His entire family immigrated to the United States on March 24, 1972, when Claimant was 17 years old. (T 21) Upon arriving in the United States, Claimant worked in various jobs including in a fuel yard, as a cleaning helper and "gofer" in a printing shop, a dishwasher, and a carpenter on ships preparing decks and platforms. (T 22) Claimant started work as a lasher with A.G. Ship on December 12, 1974. (T 23) As a lasher, Claimant would prepare cargo for loading on and unloading from the ships by the stevedores. Claimant described his work as removing or fixing in place all the lashings, bars, turn buckles, wires, clips, and shackles that secured the cargo. (T 23-24) He also testified

that his job required kneeling, bending, climbing, and extensive lifting ranging from 20 to 60 pounds depending on the equipment being used. (T 24-26) Claimant was promoted to assistant foreman in 1990 or 1991, but continued to perform the same physical tasks described above. (T 28)

On December 19, 2000, Claimant reported for work at approximately six o'clock in the evening. After working several hours unlash cargo from a ship he then began lashing a new load of cargo in the ship. At approximately 8:30 p.m., Claimant reached down to pick up a "three high bars," weighing approximately 50 to 60 pounds, and lifted the bar to about chest level when he felt blood coming out of his left nostril. (T 33-35, 40-41) Claimant testified that his blood was all over his face, clothes and on the floor of the container area of the ship. He then dropped everything and left the hatch, while his partner, who had seen what happened, called for help. Claimant testified that the nosebleed lasted approximately one minute and that with the onset of the nosebleed he felt dizzy, light-headed, and disoriented. (T 36, 39-40) The ship foreman, Lewis Chiemielski, called for an ambulance. (T 38) The paramedics attended to Claimant's nosebleed, took his blood pressure which was reported as 220/140, and administered supplemental oxygen. Claimant was then taken to the Emergency Room at Greenville Hospital in Jersey City and arrived at approximately 10:20 p.m. (T 29-41) While in the Emergency Room, Claimant was hooked up to a heart monitor and given medication on two occasions to decrease his blood pressure. (T 41) Claimant was released from the Emergency Room at approximately 1:00 a.m. the next day, and his foreman, Jose Rocco, drove him from the hospital back to Global Terminals, where they were working. Claimant stayed at Global Terminals about a half-hour, and then drove himself home. (T 41-42) Claimant testified that while driving home he still felt dizzy and was having trouble with blurry vision. After arriving at home he continued to be dizzy and felt pressure behind his eyes and at the neck. (T 42-43)

Claimant testified that he did not have any history of nosebleeds and that prior to the events of December 19, 2000, he was not under the care of any physician and was not taking any medication. (T 32) Claimant stated that he went back to his regular work on March 20, 2000, after Dr. Kleiner, his treating physician, agreed that he could try working again. However, Claimant testified that he was only able to work about 15 to 20 minutes at a time and then would need to stop and rest due to constant dizziness. He testified that the other lashers covered for him during those times. (T 47-49) Claimant also stated that there were times when he forewent working overtime and asked the foreman to cut him first because of his dizziness. Claimant stopped working on June 27, 2001. (T 50) On that day he started getting his tools ready to begin working when suddenly he felt very dizzy, his knees started to buckle, and his head started spinning. His coworkers placed ice on his neck and gave him some water. Claimant stated that he remained at work for another hour trying to recuperate but was not able to continue working. (T 51)

Claimant stated that he now experiences continuous daily feelings of dizziness and lightheadedness. He also testified that he experiences abnormal eye movements when exposed to bright light, looking to the left, when something or someone comes toward him, when bending down and looking to the left, and while watching the crawl on the bottom of the television screen. Claimant stated that his abnormal eye movements begin suddenly and last from a second up to one minute, and usually occur three to four times a day. He also stated that the abnormal

eye movements can be accompanied by headache or pressure behind his eyes. Claimant stated that people moving in front of him or moving their hands in front of his face also causes the eye movements. He also testified that his eyes tire easily from reading. (EX 31 at 81-85, 14; CX 12) Claimant testified that some of Dr. Neera Kapoor's suggestions have helped him deal with his visual problems. He has learned not to turn his head as much when he walks, changed his wristwatch from his left arm to his right arm, placed tape on the bottom of the television screen to stop him from watching the crawl at the bottom of television channels, and wearing tinted lenses. (T 58-60) Claimant also stated that he had to adjust the showerhead in his shower so the water came at him from the side instead of into his face and that he must sit on a stool when taking a shower. (T 58) He also testified that he is unable to paint, shovel snow, or cut grass around the house. Claimant also stated that he cannot drive anymore and his wife drives him, or he must take public transportation. (T 62-66)

Claimant testified that he is able to read and write English "[a] little bit." (T 67) He stated that he has never worked on a computer before and that when he reads the Italian newspaper on the computer his wife brings it up on the screen for him. Claimant also explained that he can only read for approximately 10 to 15 minutes before the light from the computer causes his abnormal eye movement. (T 68) He testified that he now has problems talking on the telephone because of confusion and an inability to concentrate. (T 68-69) Claimant also stated that he has never worked in an office environment and that he has no experience with paperwork as his wife does all of that, including writing checks and paying bills. (T 70-71)

Claimant's wife, Pauline Brunetti, also testified at the hearing. She and Claimant were married October 5, 1986. (T 106) Mrs. Brunetti stated that prior to December 19, 2000, Claimant's health was fine and he was never sick. (T 106-107) She testified that when Claimant returned home from the Emergency Room on December 20, 2000, his nose was stuffed with gauze, he was pale, and had a glassy-eyed, disoriented look. (T 108) Mrs. Brunetti stated that they have had to make changes to their household, such as modifying his eating arrangements by placing his dinner plate on a baking rack so that there is less movement into his face while he is eating, changes to the shower as described above, not having the television centered in the wall unit, and placing tape along the bottom of the screen as described above.<sup>4</sup> (T 109-114) Mrs. Brunetti also testified that Claimant does not drive anymore nor is he able to go shopping or to the mall with her as the lights and movement cause him to become dizzy. (T 109-112)

As discussed above, Claimant testified that on December 19, 2000, he had been working for several hours unloading and then loading a ship when he bent down to retrieve a three-high bar that weighed approximately 50 to 60 pounds. After getting the bar to about chest level, Claimant felt blood coming out of his left nostril. (T 33-35) He testified that there seemed to be a significant amount of blood and he became dizzy, light-headed, and unaware of his surroundings. (T 36, 39-40) An ambulance was called and Claimant was first treated by the paramedics who told him his blood pressure was 220/140. He was then taken to Greenville Hospital's Emergency Room for treatment. (T 39-41) Claimant testified that he did not have a history of hypertension or nosebleeds prior to December 19, 2000. (T 41) Claimant also

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<sup>4</sup> Claimant submitted two exhibits, CX 17 and CX 22, which are photographs of the accommodations that he and his wife have made in their home.

testified that even after being released from the hospital he was still dizzy, having blurry vision, and felt pressure in his neck and behind his eyes. (T 42-43)

Claimant was initially treated at Greenville Hospital. Claimant was admitted to the Emergency Room on December 19, 2000, and his chief complaint was a nosebleed. The Emergency Department Triage Notes record that Claimant reported having “headaches x 2 wk” and that his blood pressure was 172/110. The records also included a Hematology report dated December 19, 2000. Claimant was treated and discharged with the diagnosis of uncontrolled hypertension. (CX 3)

On December 20, 2000, Claimant went to Heartland Medical Services in Staten Island where he was seen by Dr. Lisa Hernandez.<sup>5</sup> (T 44; CX 4) Claimant testified that he was dizzy and still experiencing pressure behind his eyes. (T 45) The physician examined Claimant, changed the packing in his nose, checked his blood pressure and recommended that he see a cardiologist for an electrocardiogram and a stress test. (T 44-45; CX 4) Blood was also collected from Claimant at the visit and the results of the blood testing were reported on December 21, 2000, in a Clinical Laboratory Report. (CX 4; EX 1) Dr. Hernandez prescribed blood pressure medication and diagnosed Claimant with hypertension. (CX 4)

Claimant also saw Dr. Hernandez on December 21 and 27, 2000. On December 21, Claimant had his blood pressure checked and reported an episode of nosebleed. On December 27, Claimant had his blood pressure checked again and Dr. Hernandez made a reference in her notes that Claimant was currently taking blood pressure medication and that Claimant would follow up with a cardiologist on December 28, 2000. The physician also noted that Claimant could return to work on January 3, 2001. (CX 4)

Claimant saw Dr. Thomas Vazzana, a cardiologist, a number of times from December 28, 2000 until November 21, 2001. On December 28, 2000, the physician diagnosed Claimant with hypertension and noted that Claimant reported having headaches two weeks before his December 19, 2000 nosebleed, but denied having chest pain or shortness of breath. (CX 5) In a report dated January 6, 2001, Dr. Marc Bogin interpreted the results of Claimant’s echocardiogram. Dr. Bogin found that Claimant’s left ventricular systolic function was normal. The physician also noted that no significant Doppler abnormalities were evident although his left ventricle appeared mildly dilated but was functioning normally. (CX 5; EX 2) Claimant saw Dr. Vazzana again January 15 and February 5, 2001, for follow-up and reported feeling light-headed and dizzy. Dr. Vazzana’s records also note that Claimant’s wife called his office and reported that all of Claimant’s medical problems were neurological and that he was now seeing Drs. Kapoor and Sinnreich. (CX 5)

Claimant’s medical records include a report of a renal scan dated February 17, 2001, that was interpreted by Dr. R. Alfelro from Seaview Radiology. Dr. Alfelro found a lesion in nonvascular space in the upper pole of Claimant’s left kidney that was most likely secondary to a large renal cyst. The physician recommended a renal sonogram to rule out a solid neoplasm and to confirm the presence of the suspected renal cyst. (CX 6, 7; EX 3)

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<sup>5</sup> I have made note of the physicians’ credentials that are in the record.

Claimant's medical records also include a renal sonogram report dated February 22, 2001, that was interpreted by Dr. H. McPherson from Seaview Radiology. Dr. McPherson found a hypoechoic structure within the upper pole of the left kidney that he opined most probably represented a complex cyst. The physician considered the presence of a cystic neoplasm less likely. (CX 7; EX 4)

Claimant began treating with Dr. Kleiner for his eye condition on February 20, 2001. Previously Claimant had seen the physician on April 14, 1994, because of an upper respiratory infection. On February 20, 2001, Dr. Kleiner noted Claimant's sudden onset of hypertension which was found after treatment for his December 19, 2000 nosebleed. The physician noted that Claimant's cardiac examination and electrocardiogram were normal and stated that he "doubt[ed] that this is anything other than chronic [hypertension that] went undiagnosed because of the patient's lack of routine follow up." Claimant continued to see Dr. Kleiner until March 27, 2002. Of note, on March 12, 2001, the physician found that Claimant's blood pressure was very good but that he continued to complain about dizziness. Dr. Kleiner took him off his blood pressure medication to see if his dizziness would subside and whether his blood pressure would increase. On March 19, 2001, the physician noted that Claimant's blood pressure had increased and put him back on hypertension medication. Dr. Kleiner also noted that Claimant continued to have dizziness and that Claimant's wife said he looked like he was not attentive. The physician recommended a carotid ultrasound and a CT scan of Claimant's head. (CX 6) Dr. Kleiner's records include a report of an MRI of Claimant's brain dated April 11, 2001. Dr. M. Fine interpreted Claimant's MRI and found the scan to be normal. (CX 6; EX 6) On May 8, 2001, Dr. Kleiner noted that it was "[b]ecoming a difficult situation..." The physician found that Claimant's blood pressure was good on the changed medication but that he continued to complain of dizziness. Dr. Kleiner also noted that Claimant was going to follow-up with an ears, nose, and throat (ENT) physician. On June 13, 2001, the physician noted that Claimant's ENT work-up was negative, Claimant's blood pressure was better on simplified medication, and his dizziness had gotten a little better. Dr. Kleiner noted on July 2, 2001, that it was a "[r]eally difficult case here." Claimant continued to complain of dizziness but testing only showed some ethmoid sinus stuffiness. Dr. Kleiner recommended getting a consultation from New York University on Claimant's dizziness. On August 8, 2001, Dr. Kleiner noted that Claimant continued to have episodes of dizziness and that a neuro- ophthalmology consultation report suggested looking for a seizure disorder. The physician opined that Claimant's dizziness was unrelated to his blood pressure and noted that "[h]ow much of this is psychological is unclear but we will see what the seizure work-up shows..." On October 1, 2001, Dr. Kleiner noted that Claimant had visited Johns Hopkins and that an EEG was recommended. Dr. Kleiner's last note was dated March 27, 2002. In it he stated that Claimant's condition was a "[v]ery complex case" and that he continued to have episodes of dizziness. (CX 6)

Claimant's medical records include consultations by Drs. Allan B. Perel (Board-certified in neurology) and Ludmilla Feldman. The records from their office include Progress Notes dated April 5, 2001 and 2002 that are very difficult to read. (CX 7) In an undated letter, Dr. Feldman reported the results of her April 5, 2001 evaluation of Claimant's dizziness and paroxysmal episodes of semi-responsiveness. Claimant related the events of December 19, 2000, and stated that he was experiencing dizziness, which he described as a feeling of being off

balance and having lightheadedness. Claimant also reported that he sometimes felt as if he would faint and that the episodes are accompanied by left hand numbness and blurry vision. The physician also noted that Claimant's wife stated he had episodes when he looked semi-responsive and disoriented, and the episodes were associated with a blank stare. Dr. Feldman conducted a physical examination of Claimant and noted that his physical and neurological exam were significant for increased blood pressure and obesity; otherwise his neurological exam was normal. The physician opined that Claimant's symptoms might be secondary to his high blood pressure. Dr. Feldman recommend that Claimant undergo an MRI, a transcranial doppler to rule out stenosis or vertebro basilar insufficiency, and a sleep deprived EEG to rule out seizure disorder. (CX 7) The physicians' records also included a Transcranial Doppler Study Report dated April 5, 2001, which was interpreted by Dr. Perel. Dr. Perel found that the study was consistent with normal posterior cerebral flow. (CX 7; EX 5)

Claimant first saw Dr. Abraham I. Sinnreich on May 14, 2001, for an evaluation of his dizziness. Claimant also saw Dr. Sinnreich on May 17, May 24, and July 5, 2001, for follow-up. The records from these visits are difficult to read. The physician's records also include an Audiology Testing and Dizziness Evaluation Report and a Report on ENG Testing both dated May 17, 2001. (CX 8; EX 7) Dr. Sinnreich issued a Letter of Medical Necessity dated July 6, 2001, in which he stated that Claimant experienced significant dizziness, imbalance, vertigo, and chronic disequilibrium and that medical evaluations have been unable to find the cause of Claimant's ailment. The physician ended the letter by suggesting that Claimant be sent to New York University Medical Center to undergo vestibular rehabilitation therapy. (CX 8) Dr. Sinnreich issued another letter dated July 9, 2001, which was addressed to Dr. Kleiner. The physician stated that Claimant complained of recurrent episodes of disequilibrium lasting approximately one hour and that could occur several times during the day. Dr. Sinnreich also noted that Claimant's past medical history was significant for hypertension. On physical examination of Claimant's ears, nose, and throat, the physician found that Claimant's eyes were normocephalic and atrarumatic with full ocular movements and his pupils were equal and reactive to light without nystagmus. Dr. Sinnreich also found that Claimant's tympanic membranes were normal, his nose revealed no pathology, and oral examination was unremarkable. The physician reported that Claimant's neck was supple without lymphadenopathy, the fistula test was negative, screening neurological evaluation revealed cranial nerves from II to XII to be normal, Claimant's motor and sensory function was grossly unremarkable, and that cerebellar testing was normal. Dr. Sinnreich also reported that the Romberg test was slightly positive, the tandem Romberg was significantly positive, but the head-to-toe test was negative. The physician also conducted complete audiometric testing and found that Claimant's hearing was normal with a slight notch at 4000Hz. Dr. Sinnreich also conducted electronystagmography to study the function of the vestibular system and found that Claimant's bithermal calorics were normal which was indicative of symmetrical vestibular function. However, the physician reported that the Dix-Halipike was positive more so to the left but with a continuous nystagmus and that Claimant also had some eye tracking abnormalities. Dr. Sinnreich opined that "[t]he above, although it may represent benign positional vertigo, is most probably consistent with central pathology." The physician advised that Claimant seek vestibular rehabilitation at New York University's Rusk Institute. (CX 8; EX 9)



Claimant consulted Dr. David Malamut from New York University's Rusk Institute on July 19, 2001. The physician reviewed Claimant's medical history and noted that Claimant had a vestibular dysfunction for seven months for which medical intervention had been unsuccessful. The physician referred him for vestibular rehabilitation to foster CNS adaptation. Dr. Malamut recommended that Claimant also see a neuro-opthamologist. (CX 9)

Claimant's medical records also include the treatment records of Dr. Floyd A. Warren (Board-certified in Ophthalmology). Dr. Warren first evaluated Claimant on July 26, 2001, and issued a letter to Dr. Kleiner dated July 29, 2001, detailing the visit. The physician reviewed Claimant's medical history and performed a physical examination in which he was able to elicit Claimant's abnormal eye movements. Dr. Warren found that "with pursuit, especially to the left, the right eye could be seen episodically deviating inward" and "it appeared to be just a monocular deviation." The physician also noted that there was no obvious change of the pupil and the fissure seemed to narrow some. Dr. Warren also commented that Claimant "looked as if he was about to pass out, however, I was able to talk to him and his speech was normal without obvious decreased mentation." The physician opined that Claimant "manifest[ed] an oculomotor abnormality that I cannot readily define. The persistent O.D. esodeviation on the gaze left, is actually most suggestive of an ocular neuromyotonia, though I cannot say it was quite classic in appearance. Nonetheless, being monocular and without an obvious papillary change, I cannot say this is just convergence movement. (Could it be some type of brainstem seizure?)" Dr. Warren then recommended having Dr. David Zee consult on Claimant's condition "[g]iven the extremely unusual nature of it." (CX 10; EX 10, 11)

Dr. Warren saw Claimant again on August 17 and issued a letter dated August 30, 2001, detailing the visit. The physician noted that Claimant was "as nauseated as ever" and reported no change with his eyes. On physical examination, Dr. Warren was again able to elicit Claimant's abnormal eye movements and saw no obvious papillary change during the movement. The physician stated that Claimant "remains a dilemma. The episodes persist though the etiology remains unclear. It may be interesting that these episodes always seem to come on with the EOM testing. No other time was an abnormality seen today." Dr. Warren reiterated his recommendation that Claimant see Dr. Zee and also suggested seeing an epilepsy specialist. (CX 10; EX 12, 13)

Dr. David Zee saw Claimant on September 9, 2001, and issued a report on September 24, 2001. The physician reviewed the events of December 19, 2000, and noted that Claimant experienced dizziness and double vision almost immediately after his nosebleed and that his symptoms have remained essentially unchanged over the past nine or 10 months. Claimant explained that double vision could occur if he focused on any near object and that diplopia may also be provoked by looking to the left or looking downward. Claimant reported that the symptoms begin suddenly and lasted from a matter of seconds to a minute and that he could develop an occipital headache and some retroorbital pressure. Dr. Zee also noted that Claimant's wife stated that she had observed Claimant's eyes crossing uncontrollably. Claimant reported that he may have three to four episodes of diplopia per day, although there had been a decrease in their frequency since he has been consciously trying to avoid any circumstances that would elicit them. The physician also noted that Claimant had been taking Tegretol between July 26 and August 17, 2001, but Claimant had not experienced any changes in his eye symptoms and

reported it made him feel weak and drowsy and produced nausea. Claimant reported that he has an almost continuous daily feeling of lightheadedness and that his symptoms are somewhat better for the first hour of the morning. Dr. Zee also reviewed the MRI scan dated April 11, 2001, which he found to be normal without any evidence of a Chiari malformation or midbrain lesion. After conducting a physical examination in which he elicited Claimant's abnormal eye movement, Dr. Zee opined that "[t]his is a complex case. It appears that [Claimant] has convergence spasm principally of the right eye. The involuntary right eye adduction movements are elicited only by attempting to view a near object particularly when having to look to the left. His left eye appears to be his more dominant eye with better vision, and it is possible that he is able to suppress convergence spasm better in the left eye. There is no evidence of any oculomotor neuromyotonia." The physician then opined that Claimant did not appear to have any of the possible organic causes of convergence spasm and stated that "[i]t would be useful to obtain an EEG to exclude the possibility of a seizure arising from a hyperexcitable region of the midbrain. Frequently no structural or organic etiology is found with convergence spasm." Dr. Zee also recommended that "[i]t is often useful for patients with convergence spasm to undergo psychiatric counseling. This can help address the disability and frequent accompanying depression. Biofeedback is often helpful in attempts to retrain the eyes and help relax the extraocular muscles, thus preventing the convergence spasm with attempts at viewing near objects." (CX 12; EX 14)

Dr. Zee also sent Dr. Warren an email dated September 15, 2001, in which he stated "[Claimant] is an interesting fellow. the best we could come up with is a case of convergence spasm, likely function. he tends to fix with one eye, which makes it look peculiar. no evidence for neuromyotonia. would get en eeg, however. RX the 'usual' – prisms, drops, but most importantly some psych rx. thanks for a challenging problem. ps i have a nice video (digital) of his eye movements if you ever want it." (CX 10, 13; EX 14)

Included in Claimant's medical records is an EEG report from NYU-Mount Sinai Comprehensive Epilepsy Center dated October 9, 2001. The interpreting physicians, Drs. Sprano and Mesad, found the EEG was abnormal due to the presence of a mild anterior predominant generalized background slowing and opined that the findings were compatible with a diagnosis of diffuse cerebral dysfunction. (CX 10; EX 15)

Dr. Warren saw Claimant again on October 26 and issued a letter dated November 10, 2001, detailing the visit. The physician noted that Claimant's EEG was negative for seizure activity but showed cerebral dysfunction. Dr. Warren also noted that Claimant continued to feel dizzy and have episodes of head shaking. On physical examination the physician was able to elicit Claimant's abnormal eye movements. Dr. Warren opined that "[t]he process remains unclear" and recommended that Claimant patch his right eye. The physician stated that he hoped that Claimant would then not be so disoriented when the abnormal eye movements occurred. (CX 10; EX 16, 17)

Dr. Neera Kapoor from the Head Trauma Vision Rehabilitation Unit at the University Optometric Center evaluated Claimant on November 2, 2001 and November 9, 2001, and issued a report dated November 25, 2001. The physician reviewed Claimant's symptoms, medical

history, and conducted a physical examination. Dr. Kapoor listed her assessment of Claimant's condition as convergence insufficiency, deficits of saccades, deficits of pursuits, photosensitivity, myopia, presbyopia, and vertigo/dizzy. The physician also stated that Claimant's abnormal eye movements and other symptoms were not typical of any specific diagnosis or syndrome and a precise etiology was unclear. However, Dr. Kapoor stated that "it is clear that the onset of these symptoms followed his work-related injury (12/00)." The physician also questioned whether Claimant would be benefited by vision rehabilitation but did prescribe tinted eye glass lenses and stated that home-based vision rehabilitation would be attempted on a trial basis. Lastly, Dr. Kapoor opined that "[Claimant] is unable to work in any capacity with the persistent and existent intensity of his headaches, eyestrain, light sensitivity, dizziness, and visual-vestibular disturbances. These signs and symptoms are exacerbated with physical motion of [Claimant] as well as the motion around him. Based upon my remarks (above), it is my professional opinion that [Claimant] is permanently, totally disabled." (CX 14; EX 18)

Claimant's medical records include an initial evaluation and progress notes from the State University of New York State College of Optometry Head Trauma Vision Rehabilitation Unit. Claimant was first evaluated on November 2, 2001, and his chief complaints were constant dizziness, increased motion sensitivity, increased light sensitivity, and increased eye strain since December 2000. Claimant was diagnosed with convergence insufficiency, photosensitivity, myopia/presbyopia, and deficits of saccades/deficits of pursuits. Claimant continued to attend follow-up evaluations until November 5, 2004, without any significant change in symptoms or diagnosis. (CX 14)

Claimant began seeing Mr. Louis A. Marcellino, a licensed clinical social worker, on January 10, 2002, and continues to see him for treatment of his depression. In numerous sessions Claimant expressed to Mr. Marcellino his anxiety regarding his financial situation and his frustration with his medical condition and inability to return to work. Mr. Marcellino found Claimant's response to his situation appropriate and that Claimant was responding well to treatment. (CX 16)

Claimant's medical records also include a renal sonogram report dated April 8, 2002, that was interpreted by Dr. H. McPherson. Dr. McPherson recorded his impression of Claimant's renal sonogram as showing a left renal upper pole complex cyst. (CX 6)

Dr. Warren saw Claimant again on May 10 and issued a letter dated May 15, 2002, detailing the visit. Claimant stated that he continues to get the eye spasm, that they could occur several times in a row, and that he also had episodes where he felt weak like he might "black out." The physician conducted a physical examination and noted that the etiology of Claimant's eye spasms was still unclear. Dr. Warren suggested repeating the EEG testing considering the prior results. (CX 10; EX 19, 20) Additionally, on May 15, 2002, the physician issued a letter in which he stated that "[Claimant] is under my care for an eye movement disorder. Wile [sic] the nature of this is unclear, it is persistent and reproducible. These episodes make it impossible for [Claimant] to work despite various medications. Your consideration is appreciated." (CX 10)

Claimant's medical records include a report of an MRI dated May 16, 2002, that was interpreted by Dr. L. Voutsinas. Dr. Voutsinas found there was not any significant interval change from Claimant's prior examination on April 11, 2001. (CX 15; EX 21)

Claimant's medical records also include a letter from Mr. Marcellino to the Social Security Administration dated June 3, 2002. In the letter Mr. Marcellino stated that he had been treating Claimant for individual psychotherapy since January 10, 2002, and that Claimant "presented with complaints of anxiety and depression, precipitated by a serious medical problem with his eyes that has significantly changed his life, rendering him unable to work." Mr. Marcellino stated that Claimant had been fully compliant with his treatment. (EX 22)

Dr. Kapoor re-evaluated Claimant on June 5, 2002, and issued a report on the same day. The physician's report contained much of the same language as her report dated November 25, 2001. Dr. Kapoor did note that in November of 2001 Claimant's adduction deficit or spasm occurred daily but Claimant reported that the spasms had decreased to four or five times a week but with an increase in intensity. The physician conducted a physical examination and listed her assessment of Claimant's condition as convergence insufficiency, deficits of saccades, deficits of pursuits, photosensitivity, myopia, presbyopia, vertigo/dizzy. Dr. Kapoor's opinions regarding Claimant's condition had not changed upon re-evaluation and she reiterated that Claimant was permanently and totally disabled due to his headaches, eyestrain, light sensitivity, dizziness, and visual-vestibular disturbances. (CX 14; EX 23)

Included in Claimant's medical records is an EEG report from the NYU-Mount Sinai Comprehensive Epilepsy Center dated June 18, 2002. Drs. Sprano and Ritaccio interpreted the results of the testing as a normal EEG recording. (CX 10; EX 24)

Claimant also submitted the Social Security Administration's decision awarding benefits dated August 16, 2002. Administrative Law Judge (ALJ) Peter F. Crispino found that Claimant was under a "disability" that began on December 20, 2000, and that the work Claimant performed from March 20, 2001 through June 28, 2001, did not reach the level of substantial gainful activity and was an unsuccessful work attempt. Judge Crispino credited Drs. Kapoor and Warren's opinions and found that Claimant's "ocular abnormality preclude[d] work at all extertional levels." (CX 18)

Dr. Warren saw Claimant again on July 17 and issued a letter dated July 29, 2003, detailing the visit. Claimant reported little change in his condition. Claimant also reported that he was injured in a motor vehicle accident. Dr. Warren conducted a physical examination and opined that "[t]he episodes do have some aspect of convergence spasm, though not 100% typical and could still be central." The physician also noted that although Claimant's abnormal eye movements had not responded to medication in the past he was prescribing an empiric trial with Neurontin. (CX 10; EX 25, 26)

Dr. Warren's records also include a letter dated August 25, 2003, that is marked "Draft." The letter recounted the events of Claimant's nosebleed on December 19, 2000, and stated that "[Claimant] is currently disabled due to oculomotor spasms associated with dizziness and disorientation... While no 'lesion' has been found radiologically, these episodes have been

observed by numerous different physicians. By history there was direct causal relationship of this occurring while doing his work lifting heavy pipes.” (CX 10)

Dr. Warren’s records also include a letter dated February 4, 2004, addressed “To Whom It May Concern.” The letter contains the same language as his August 25, 2003 letter detailed above. Additionally, the letter stated, “He remains disabled as a result of these episodes and ongoing symptomatology. I can say with a reasonable degree of medical certainty that his disability is a result of a work related event.” (CX 10)

Dr. Warren saw Claimant again on March 16, 2004 and January 12, 2005, and issued letters dated March 20, 2004 and January 22, 2005, respectively, detailing the visits. In both visits the physician noted that Claimant’s symptoms remained unchanged and conducted a physical examination. In the January 12, 2005 letter, Dr. Warren opined that overall Claimant’s condition appears stable. (CX 10)

Dr. Warren’s records also include a letter dated February 5, 2005, addressed “To Whom It May Concern.” The letter stated, “This is to confirm that [Claimant] remains totally disabled from any gainful employment as a result of his eye movement/neurologic disorder as a result of his work injury sustained on 12/19/00.” (CX 10)

Dr. Warren testified in a deposition dated October 6, 2004. The physician stated that he first saw Claimant on July 26, 2001. (CX 11 at 5-7) Dr. Warren stated that Claimant’s external examination was unremarkable except that he needed glasses to reach 20/20 vision. The physician also testified that with pursuit testing he was able to elicit the spontaneous turning in of Claimant’s right eye, which was also accompanied by his head going back and dizziness. Dr. Warren noted that the turning in of the right eye occurred episodically but without any obvious papillary change. The physician found the lack of papillary change significant in that generally convergence spasm or voluntary movement produces a narrowing myosis of the pupil. (CX 11 at 7-8) Dr. Warren stated that he initially diagnosed Claimant with a binocular vision disorder, possibly oculoneuro myotonia. The physician explained that oculoneuro myotonia is usually seen in patients who have had tumors or aneurysms at the skull base and is often found in association with radiation. He further explained that in people with oculoneuro myotonia there is a sustained muscle action so that when the eye moves inward as part of a natural eye movement, it does not release when it is supposed to but actually stays in. (CX 11 at 8-9) However, Dr. Warren found that Claimant’s abnormal eye movements were not a classic example because he did not find any underlying weakness. Nonetheless, the physician opined that given the circumstances surrounding the emergence of the abnormal eye movements, that it was oculoneuro myotonia or some convergence type problem. (CX 11 at 9) Dr. Warren also reviewed Dr. Zee’s report dated September 24, 2001, and his email dated September 15, 2001. The physician noted that Dr. Zee’s recommendation that Claimant seek psychiatric counseling suggested there is a psychological component to Claimant’s convergence spasm. However, Dr. Warren also noted that Dr. Zee called Claimant’s convergence spasm an “involuntary” right eye adduction movement, which he opined was at odds with a psychiatric diagnosis. The physician also noted that Dr. Zee stated there were organic causes for convergence spasm, some of which are vascular in nature. Dr. Warren opined that perhaps the events of December 19, 2000 showed that Claimant suffered some vascular neurologic event, such as a brainstem stroke, that resulted

in his abnormal eye movements. (CX 12-13, 25) The physician then testified to the rest of Claimant's medical history as set forth above and noted that Claimant's symptoms were predominately unchanged over the course of his visits. (CX 11 at 14-21) Dr. Warren opined that the cause of Claimant's abnormal eye movements is a misdirection or misfiring of the brainstem and that his condition is likely to remain permanent. (CX 11 at 21-23) The physician also opined that Claimant would be unable to return to his previous job. Regarding any other type of employment, Dr. Warren stated "[i]t would just be a question of seeing whether he's able to tolerate it again. . ." and "I don't know if he would be able to sustain. . ." Dr. Warren also stated that Claimant should not be driving heavy machinery, doing heavy lifting, or work where heights were involved or where balance would be an issue. (CX 11 at 23-24) When the physician was questioned as to whether Claimant's condition could be psychiatric rather than organic in nature, Dr. Warren stated that he does not think Claimant's condition is psychiatric in nature as there is no papillary change, although he admitted that the exact organic cause of Claimant's condition remained undetermined. (CX 11 at 26-29, 38) The physician also opined that Claimant's abnormal eye movements are causally related to the events of December 19, 2000, because the onset of dizziness started as soon as Claimant experienced the nosebleed and hypertension after lifting heavy equipment. (CX 11 at 35-38)

Dr. Larry Frohman (Board-certified in ophthalmology) examined Claimant on December 2, 2004, at the behest of Employer, and issued a report dated December 10, 2004. The physician reviewed the April 5, 2001 report of Claimant's transcranial Doppler ultrasound, the April 11, 2001 report of a MRI of Claimant's brain, Dr. Sinnreich's records and report dated July 9, 2001, Dr. Warren's medical records from July 26, 2001 through February 5, 2005, Dr. Zee's report dated September 24, 2001, an EEG report dated October 9, 2001, Dr. Kapoor's reports dated November 25, 2001 and June 5, 2002, Mr. Marcellino's records from January 10, 2002 through December 13, 2004, a June 18, 2002 EEG report, and Dr. Warren's deposition dated October 6, 2004. Dr. Frohman noted that Claimant did not have a significant ocular history prior to December 19, 2000. The physician conducted a physical examination and stated that he found no evidence of a motility disturbance that was organic in nature and that Claimant's pupils did dilate during the inward eye movement. Further, the physician stated that when he performed the optokinetic nystagmus (OKN) "with the tape moving and gradually brought the tape in towards him while he was doing the OKN test as a distraction and [he] did not see any convergence movements" and thus opined that Claimant's abnormal eye movements may be a learned behavior. Dr. Frohman criticized Dr. Kapoor's finding that Claimant was permanently totally disabled as premature as neither her own prescribed therapies nor Dr. Zee's suggestions had been attempted. The physician also criticized Dr. Warren's "hypothesis" that Claimant's abnormal eye movements are caused by a misdirection or miswiring of the brainstem as miswiring generally takes months to develop and does not occur as an acute event, such as that described by Claimant. Additionally, Dr. Frohman noted that Dr. Zee did not find any evidence of miswiring. The physician also opined that "[u]sing the test of medical probability, it ***IS NOT*** probable that the injury (h[is] nosebleed) is related to the eye movement disorder." Dr. Frohman found that Claimant's nosebleed was not a severe hemorrhage as Claimant's hemoglobin was normal the day after the event. Additionally, the physician stated that "no statement can be made as to whether his maximal outcome has been reached" as the suggestions of Dr. Zee, "a world known expert in eye movement disorders" had not yet been attempted by Claimant. Dr. Frohman also suggested that Claimant should be considered for a formal neuropsychological

evaluation and possibly an Amytal interview by an experienced psychiatrist. (EX 29) (emphasis in original)

Dr. Frohman also testified in a deposition dated April 22, 2005. The physician's deposition testimony reiterated much of what was in his December 10, 2005 report. Of note, Dr. Frohman stated that he found nothing in Claimant's medical records to suggest that the events of December 19, 2000 and Claimant's abnormal eye movements were causally connected. (EX 32 at 25) Additionally, the physician noted that Claimant reported having double vision that was monocular in his right eye; however, Dr. Frohman stated that this kind of double vision does not have a neurologic etiology. (EX 32 at 26) The physician restated that on physical examination the pupil of the left showed some dilation during the inward movement suggesting that Claimant's abnormal eye movements were not isolated but were part of a near reflex. (EX 32 at 28) Dr. Frohman also reemphasized that when performing the OKN test he brought the object close to Claimant without first telling him he was going to do so and did not elicit a spasm on that occasion, which indicated to him that Claimant's eye spasm is a volitional movement. (EX 32 at 29, 44-46) The physician diagnosed Claimant's ocular condition as a non-organic accommodative spasm or superimposed volitional convergence maneuver. In coming to that conclusion, Dr. Frohman relied on the lack of evidence of any organic visual dysfunction. Additionally, the physician opined that Claimant's visual problems were not causally related to the events of December 19, 2000. (EX 32 at 34, 54-55) When asked what the non-organic cause of Claimant's condition was, Dr. Frohman stated that it could be either malingering or hysteria, but that he does not make such a distinction and would rely on a psychiatrist to make such a diagnosis. (EX 32 at 38-39) Additionally, the physician stated that Claimant did not have any work restrictions "from an eyeball standpoint." (EX 32 at 34-35)

## B. Discussion

### 1. Claimant's eye disorder is an injury causally related to his covered employment

Section 20(a) of the Act provides that, "in the absence of substantial evidence to the contrary," it is presumed "[t]hat the claim comes within the provisions of this Act." 33 U.S.C. § 920. Under § 20(a) of the Act, Claimant may be entitled to a presumption that his injury is causally related to his employment. Claimant bears the burden of establishing entitlement to the § 20(a) presumption by establishing a prima facie case. Claimant must show that (1) he suffered an injury, harm, or pain and (2) working conditions existed which could have caused the harm. See U.S. Industries/Federal Sheet Metal v. Director, OWCP, 455 U.S. 608 (1982). Claimant must establish each element of his prima facie case by affirmative evidence. Kooley v. Marine Industries Northwest, 22 BRBS 142 (1989); Director, OWCP v. Greenwich Collieries, 512 U.S. 267 (1994). If the § 20(a) presumption has been invoked by the evidence, the employer has the burden of establishing the lack of a causal nexus. Dower v. General Dynamics Corp., 14 BRBS 324 (1981). The employer must present evidence that is sufficiently specific and comprehensive to sever the potential connection between the particular injury or disease and the job. Swinton v. J. Frank Kelly, Inc., 554 F.2d 1075, 1082 (D.C. Cir. 1976). If the § 20(a) presumption is successfully rebutted, it falls out of the case and all of the evidence must be weighed to resolve the causation issue. Hislop v. Marine Terminals Corp., 14 BRBS 927 (1982).

I find that the evidence is sufficient to invoke the § 20(a) presumption with regard to the question of whether Claimant's abnormal eye movements, dizziness, light-headedness, and double vision are causally related to the on-the-job events of December 19, 2000. Dr. Warren, Dr. Zee, Dr. Kapoor, and Dr. Frohman examined Claimant and documented Claimant's abnormal eye movements. Claimant testified that his dizziness and light-headedness began with his nosebleed and high blood pressure experienced after he lifted a three-high bar to chest level while loading a ship for Employer. Furthermore, Dr. Warren and Dr. Kapoor opined in separate opinions that the onset of Claimant's abnormal eye movements was related to the nosebleed and high blood pressure that he experienced on December 19, 2000. Even Dr. Frohman, upon whom Employer relies, admits that Claimant did not have any significant ocular history prior to the events of December 19, 2000, and does not dispute that the onset of Claimant's eye movements occurred immediately after his nosebleed and episode of high blood pressure on the job on December 19, 2000.

Based on the foregoing I find that Claimant has produced sufficient evidence that he sustained an injury that resulted in his abnormal eye movements and that working conditions existed which could have caused this injury. Consequently, I find that Claimant is entitled to the § 20(a) presumption that his eye disorder is causally connected to the events of December 19, 2000, and is employment related.

Employer relies on the opinions of Drs. Frohman and Zee to rebut the § 20(a) presumption. Dr. Frohman disputed Dr. Warren's opinion that Claimant suffered a misdirection or miswiring in his brainstem based on Dr. Warran's conclusion that such a condition takes months to develop and is not the result of an acute event such as that described by Claimant. (EX 29) Additionally, Dr. Frohman addressed Claimant's complaints regarding monocular double vision in the right eye. The physician explained that double vision of that variety does not have a neurologic etiology but is the result of an astigmatism, bubble in the lens, or wrinkling in the macula. Although he is not a licensed psychiatrist, the physician opined that Claimant's abnormal eye movement was psychiatric in nature. In coming to this conclusion, Dr. Frohman stated that he could elicit Claimant's abnormal eye movements when he told Claimant he was going to move an object near him. However, when he moved an object toward Claimant without first warning him, the physician was unable to elicit Claimant's abnormal eye movements. Additionally, Employer relied on Dr. Zee's opinion although the physician did not address the causation of Claimant's eye condition other than to state that the organic causes of convergence spasm do not appear likely in Claimant and suggested psychiatric counseling to address the disorder and the frequently underlying depression that accompanies such a condition. I find that the opinions of Drs. Frohman and Zee meet Employer's burden of providing substantial evidence sufficient to rebut the § 20(a) presumption.

Based on the foregoing, the presumption falls out of this case, and has no further effect on the outcome. The final analytical step is to weigh the entire record relating to causation of Claimant's vision problems. Swinton v. J. Frank Kelly, Inc., 554 F.2d 1075, 1082 (D.C. Cir. 1976); Hislop v. Marine Terminals Corp., 14 B.R.B.S. 927 (1982). I find that the majority of the medical opinions, along with the chain of events of December 19, 2000, reasonably support a finding of a causal link between Claimant's abnormal eye movements and his covered employment. Claimant had been working several hours and was lifting a bar weighing 50-60



pounds when his nose began to bleed and he became dizzy. Claimant was then treated by paramedics for high blood pressure and taken to the Emergency Room at Greenville Hospital. The next day Claimant saw Dr. Hernandez who placed him on hypertension medication and recommended that Claimant see a cardiologist. Claimant proceeded to see numerous specialists in an attempt to have his condition diagnosed and treated, including Drs. Warren, Zee, and Kapoor. Both Drs. Warren and Kapoor opined that Claimant's abnormal eye movements were causally related to the events of December 19, 2000. Further, both physicians saw Claimant numerous times and continue to see him to assess whether there has been any change in his condition.

Dr. Warren opined that Claimant's eye condition is a result of a miswiring or misdirection of his brainstem that was caused by an ischemic event that occurred when Claimant was working on December 19, 2000. In coming to that conclusion, the physician considered the events surrounding Claimant's nosebleed, including severe hypertension and dizziness, and his continuing complaints of dizziness and light-headedness. Dr. Warren also relied on the opinion of Dr. Zee in which he stated that convergence spasm can have organic causes that have a vascular component. Although neither physician found evidence that Claimant demonstrated an organic cause that would explain his condition, Dr. Warren opined that Claimant's abnormal eye movements might have a vascular organic cause based on the history of events as Claimant experienced an acute onset of dizziness, which is similar to what might occur with a brainstem stroke. (CX 11 at 12-13, 25)

Claimant was also examined by Dr. Zee who diagnosed him with convergence spasm principally of the right eye. The physician characterized Claimant's abnormal eye movements as "involuntary." The physician also stated that the organic causes of convergence spasm are rare and "do not appear likely in [Claimant]." Dr. Zee also recommended that Claimant undergo psychiatric counseling to "help address the disability and frequent accompanying depression" and biofeedback to retrain his eyes. (CX 12) Additionally, Dr. Kapoor examined Claimant and opined that Claimant had a convergence insufficiency and the "onset of these symptoms followed his work-related injury (12/00)." The physician also stated that Claimant's symptoms did not typify any precise diagnosis and that she was unable to give a specific etiology for his condition.

Employer's expert, Dr. Frohman, diagnosed Claimant with convergence spasm and opined that Claimant's condition is psychiatric in nature as he can not find any evidence of an organic etiology. In coming to this conclusion, the physician relied on his testing of Claimant, part of which included his failure to elicit one of Claimant's abnormal eye movements upon bringing an object toward Claimant without first warning him. Dr. Frohman also relied on Dr. Zee's report in which he stated that the organic causes were not likely in Claimant and his suggestion that Claimant seek psychiatric counseling.

In determining the causation question, I fully credit Claimant's testimony regarding the events of December 19, 2000, and his description of his ongoing eye problem. In weighing all of the medical opinion evidence, I find that Dr. Warren's opinion is entitled to the most weight. Admittedly, Dr. Warren was not able to provide a definitive diagnosis for Claimant's condition. However, in coming to the conclusion that Claimant's eye condition is organic in nature, the

physician considered Claimant's subjective complaints, all the objective testing, Claimant's prior medical history, the events of December 19, 2000, including a nosebleed, dizziness, disorientation, and an acute episode of hypertension, and Claimant's symptoms after December 19, 2000. Additionally, the physician specifically considered a psychiatric cause but concluded that Claimant's condition is organic in nature and is related to the events of December 19, 2000.

Employer argues that the opinions of Drs. Frohman and Zee should be relied upon and that Claimant's condition should be found to be psychiatric in nature and unrelated to his covered employment.<sup>6</sup> However, I find that Dr. Zee's opinion is unclear regarding whether he diagnosed Claimant's condition as psychiatric in nature. The physician stated that Claimant's right eye movement was "involuntary," although later in his report he stated that the organic causes of convergence spasm are rare and appeared unlikely in Claimant. Dr. Zee also suggested psychiatric counseling to address the disability and the frequent accompanying depression. However, the physician did not specifically state whether he found Claimant's abnormal eye movements to be due to a psychiatric condition or whether the psychiatric counseling was meant to help Claimant cope with his organic condition and any depression he suffered because of it. Moreover, Employer did not offer the opinion of a psychiatrist in support of Dr. Frohman's opinion that Claimant's condition is psychiatric in nature although the physician testified that when he suspects a patient's eye disorder is psychiatric in nature he relies on a psychiatrist to specifically diagnosis and treat the condition. (EX 32 38-39) Additionally, Dr. Rosenberg, Claimant's vocational expert, who is also a licensed psychologist, testified that he "did not perceive [that Claimant] was malingering." (CX 20; CX 22 at 37-38) Although Dr. Frohman is a credentialed neuro-ophthamologist, a diagnosis of a psychiatric condition should be made by a psychiatrist or a psychologist. Further, even if Claimant's vision problems are psychological in nature, this does not rule out a causal connection to the events of December 19, 2000 and coverage under the Act. See generally Dygert v. Manufacturer's Packaging Co., 10 BRBS 1036, 1043-44 (1979); Moss v. Norfolk Shipbuilding & Dry Dock Corp., 10 BRBS 428, 431 (1979); Accord Urban Land Inst. v. Garrell, 346 F. Supp. 699 (D.C. 1972).

In addition, the record shows that there was a temporal nexus between the events of December 19, 2000, and Claimant's eye condition. Claimant need not establish that he was under unusual stress or strain or that the injury would not have occurred elsewhere. Wheatley v. Adler, 407 F.2d 307, 311 (D.C. Cir. 1968) (*en banc*); Cairns v. Matson Terminals, Inc., 21 BRBS 252 (1988); see also Brown v. Watters Wireline, BRB 89-897 and 89-897(A) (1993) (unpublished) (upholding award of benefits where ALJ found claimant's stroke to be work-related based on medical opinions of record, testimony of claimant and co-workers, and temporal nexus between claimant's symptoms and exertion). It is significant that all the physicians here are in agreement that the medical evidence shows that Claimant did not have a significant ocular history or a history of hypertension prior to the events of December 19, 2000. Moreover, no one

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<sup>6</sup> Employer also argued that Dr. Warren's opinion should be rejected as it fails to meet the standards of Daubert. Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579, 590 (1993). However, I find that Dr. Warren's opinion meets the standards set forth in the Federal Rules of Evidence and Daubert regarding the admissibility of expert testimony.

contradicted the events surrounding Claimant's nosebleed,<sup>7</sup> which include his exertion of working for several hours unloading a ship and the direct events of lifting a 50 to 60 pound bar up to chest level. Nor did any physician contradict Claimant's contention that his abnormal eye movements directly followed his nosebleed. Indeed, all the physicians based their diagnoses on the fact that the onset of Claimant's abnormal eye movements was concurrent with his nosebleed.

After considering the medical opinions of record, Claimant's testimony, and the temporal nexus between Claimant's symptoms, exertion, and resulting injury, I find that the record as a whole establishes that Claimant's eye disorder is causally related to his employment with Employer.

2. Claimant reached MMI on October 6, 2004

The date on which a claimant's condition becomes permanent is primarily a medical determination. Thus, the medical evidence must establish the date on which the employee has received the maximum benefit of medical treatment such that his or her condition will not improve. Trask v. Lockheed Shipbuilding & Constr. Company, 17 BRBS 56, 60 (1985). Conversely, MMI or permanency is not reached where a condition is improving or improvement is expected. Dixon v. John J. McMullen & Assocs., 19 BRBS 243, 245 (1986).

In his deposition dated October 6, 2004, Dr. Warren stated his opinion that Claimant's condition was likely to be permanent and stable. (CX 11 at 23) Additionally, Dr. Kapoor opined that Claimant was permanently disabled in her reports dated November 25, 2001 and June 5, 2002. (CX 14; EX 18, 23) Alternatively, on December 10, 2005, Dr. Frohman opined that Claimant had not reached MMI as not all of the treatment recommendations made by Dr. Zee had been implemented. (EX 29)

I find that Dr. Warren's opinion regarding MMI is the most probative as he treated Claimant for an extended period of time and was aware of what treatments were being attempted to treat Claimant's condition. Although Dr. Kapoor opined that Claimant was totally and permanently disabled prior to October 6, 2004, Dr. Warren's notes document that he was continuing to try different treatments to alleviate Claimant's condition, and not until October 6, 2004, did he state that Claimant's condition was permanent in nature. In addition, I credit Claimant's statements that his symptoms have not changed significantly over time. Therefore, I find that Claimant attained MMI on October 6, 2004.

3. Claimant is not able to return to his usual job with Employer; Employer has failed to demonstrate the availability of SAE

If a claimant demonstrates an inability to perform his or her usual job, a prima facie case of total disability is established. The employer can then rebut by establishing the availability of

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<sup>7</sup> Based on blood testing performed on Claimant the next day, Dr. Frohman found that Claimant's nosebleed was not significant from a medical standpoint.

other jobs which the claimant could perform. American Stevedores v. Salzano, 2 BRBS 178 (1975), aff'd, 538 F.2d 933 (2d Cir. 1976).

Employer concedes that Claimant is not able to return to his job as a lashier. (Emp's Br. at 22) Additionally, it is clear that Claimant's job with Employer is too physically demanding for him to be able to perform, based on evaluations by Dr. Warren and Dr. Kapoor.

The next question is the extent of Claimant's permanent disability. The Act defines disability as an "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." § 33 U.S.C. § 902(10). Therefore, in order for a claimant to receive a disability award, he or she must have an economic loss coupled with a physical or psychological impairment. Sproull v. Stevedoring Servs. of America, 25 BRBS 100, 110 (1991). Once a claimant establishes that he is unable to perform his usual job with employer, the burden shifts to the employer to show SAE exists. Clophus v. Amoco Prod. Co., 21 BRBS 261 (1988); Nguyen v. Ebttide Fabracators, 19 BRBS 142 (1986). The employer meets this burden by showing that actual employment opportunities exist by identifying specific jobs that are available to the claimant in his local community. Salzano, 2 BRBS 178 (1975), aff'd, 538 F.2d 933 (2d Cir. 1976). The employer must also show that claimant could perform such jobs given his age, education, work experience, and physical restriction. Edwards v. Director, OWCP, 99 F.2d 1374 (9th Cir. 1993); cert. denied, 511 U.S. 1031 (1994). If the employer fails to do so, the claimant must be found to be totally disabled. Manigault v. Stevens Shipping Company, 22 BRBS 332 (1989); MacDonald v. Trailer Marine Transp. Corp., 18 BRBS 259 (1986), aff'd, (No. 86-3444) (11<sup>th</sup> Cir. 1987) (unpublished). If the employer meets this burden, the claimant must then prove that he has made a diligent attempt to secure employment. Palombo v. Director, OWCP, 937 F.2d 70; 25 BRBS 1 (CRT) (2nd Cir. 1991).

Ms. Laurie Havassy, a Vocational/Employability Specialist, interviewed Claimant on February 15, 2005, at the behest of Employer, and issued a report dated February 25, 2005. Ms. Havassy reviewed Claimant's medical records, making particular note of the reports of Drs. Frohman, Zee, Warren, and Kapoor. During the interview, Ms. Havassy noted that Claimant was born in Italy and only received the equivalent of an eighth grade education before quitting school to help support his family. Ms. Havassy also noted that Claimant wore tinted glasses and was told that he wears the glasses all the time because he eyes are sensitive to light and very bright light tends to make him dizzy. Additionally, Ms. Havassy noted that Claimant has a valid driver's license but no longer drives. Claimant also reported that he was taught various coping mechanisms to deal with his visual problems, including turning his whole body instead of his head, sitting to the left of the television, to avoid bending, and not watching the crawl on the bottom of television channels. Claimant also reported problems with his balance and stated he uses handrails when climbing or descending stairs, tries to avoid stooping, kneeling, or bending for fear of an onset of dizziness, and gets dizzy if he reads continuously. Ms. Havassy also noted that Claimant has only limited experience with a computer and does not have any experience using a computer keyboard. During the interview, Ms. Havassy conducted some educational and aptitude testing and found that Claimant scored at a post high school level in reading and at a seventh grade level in math. Ms. Havassy reported that Claimant was able to read, understand, speak, and write English without difficulty, had an average numerical ability with whole

numbers but was unable to complete the testing sections dealing with fractions and decimals, and had a below average ability to compare numbers and patterns and opined that this kind of task should be avoided in a vocational setting. Ms. Havassy also noted the restrictions placed on Claimant's employment by Dr. Warren which included avoiding heavy lifting, heights, driving heavy machinery, or anything where balance would be an issue. Ms. Havassy conducted a transferable skills analysis and concluded that Claimant could do sedentary or light work with intermittent standing/walking. Ms. Havassy defined light work as "exerting up to 20 pounds occasionally, 10 pounds frequently, and a negligible amount constantly," while sedentary was defined as "exerting up to 10 pounds occasionally, negligible amount frequently, no lifting at all on a constant basis, standing and walking occasionally, and sitting constantly." Ms. Havassy found the following alternate occupations were compatible with Claimant's skills and physical restrictions: taxicab starter-dispatcher, messenger, copy, shipping-order clerk, scheduler, maintenance, yard clerk, reservation clerk, store cashier, telephone solicitor, surveillance system monitor, store demonstrator, counter attendant, and information clerk. Ms. Havassy also conducted a labor market survey in which she identified specific jobs in Claimant's geographic area that would be suitable, including cashier, parking lot attendant, dispatcher, sales associate, and security guard. Ms. Havassy concluded her report by opining that "[b]ased upon [Claimant]'s residual vocational profile, which includes his work history, skills, educational background, medical information, self-report of physical abilities, and a transferable skills analysis, it is my opinion based upon a reasonable degree of vocational probability, [Claimant] is capable of earning at least \$7.00 - \$10.00 per hour to start (\$280.00 - \$400.00 per week)." (EX 30)

Ms. Havassy also testified in a deposition dated April 19, 2005. Her deposition testimony reiterated much of what was in her February 25, 2005 report, including a review of the labor market survey she conducted that is discussed above. Of note, Ms. Havassy reiterated her conclusion that Claimant could perform sedentary to light work that did not include heavy lifting, heights, or operating heavy machinery. (EX 33 at 9) Ms. Havassy admitted that the only restrictions she placed on Claimant's ability to work were the ones given by Dr. Warren in his deposition testimony dated October 6, 2004, which included no heavy lifting, operating heavy machinery, heights, or where balance would be an issue, and she did so at Employer's counsel request. (EX 33 at 10) Ms. Havassy stated that she was aware of Dr. Warren's letter dated February 4, 2004, in which he opined that Claimant was disabled from work but felt that Dr. Warren's deposition testimony was clear that Claimant could work for eight hours, or full-time, within the restrictions he discussed and it was her experience that if a physician's patient was limited to part-time that the physician would affirmatively indicate such a limitation. (EX 33 at 33-36, 53-54) However, Ms. Havassy admitted that she did not have Dr. Warren's subsequent report dated February 5, 2005, in which he opined that Claimant was totally disabled from gainful employment; nor was she aware of the modifications made to Claimant's home to accommodate his visual impairment except for the tape along the bottom of the television. (EX 33 at 35, 46-47)

Dr. Ronald L. Rosenberg conducted a Vocational and Earning Capacity Evaluation on Claimant, and issued a report dated March 1, 2005, at the behest of Claimant. In doing so Dr. Rosenberg reviewed Employee's Claim for Compensation dated November 26, 2001, Employer's Notice of Controversion of Right to Compensation dated July 21, 2003, Claimant's

tax and income records, Mr. Marcellino's records from January 10, 2002 through December 13, 2004, Dr. Kapoor's reports dated November 25, 2001 and June 5, 2002, numerous reports from Seaview Radiology, medical records from NYU Medical Center, Dr. Zee's report dated September 24, 2001, Dr. Eggers report, Dr. Sinnreich's report dated July 9, 2001, Dr. Feldman's report, Dr. Kleiner's records from April 14, 1994 through April 8, 2002, medical records from Vazzana and Bogin Cardiology Associates dated December 28, 2000, January 6, 15, February 5, and November 21, 2001, medical records from Heartland Medical Services dated December 20, 21, 27, 2000, medical records from Greenville Hospital dated December 19, 2000, Dr. Warren's physician records from July 26, 2001 through February 5, 2005, Dr. Frohman's report dated December 10, 2005, the transcript from Dr. Warren's deposition dated October 6, 2004, and Social Security Administration's decision awarding benefits dated August 16, 2002. Dr. Rosenberg also interviewed Claimant on February 14, 2005, when Claimant reported complaints consistent with his recorded medical history and that his visual problem was persistent throughout the day with frequent spasms and exacerbations. Dr. Rosenberg also noted that Claimant was born in Italy and only completed the equivalent of the eighth grade. Dr. Rosenberg stated that his "clear impression of [Claimant] was that he was a sincere gentleman with a strong, continuous work ethic and labor force participation until 12/19/00. I did not perceive he was malingering. I was convinced he would work if he were able to." Dr. Rosenberg reported that Claimant's educational testing showed a reading comprehension level at a 7.7 grade equivalency and math skills at only a 5.1 grade equivalency. Dr. Rosenberg also noted that Claimant complained that extended reading was difficult, if not impossible, because of his visual disturbance. Dr. Rosenberg opined that "[i]t is my professional opinion, from my interview and the preponderance of information that has been made available, that [Claimant] is disabled from his usual occupation. . . It would indeed be hazardous for him to even attempt to return to this kind of work. It is my further opinion that he is ***disabled from all working as well and this is likely to be permanent over four years after the 12/19/00 occurrence.*** [sic]" (CX 20) (emphasis original).

Dr. Rosenberg also testified in a deposition on April 18, 2005. At that time, Dr. Rosenberg stated that he reviewed Claimant's Social Security Administration's disability award, Claimant's wage history, work history, all the medical records and reports listed above, and Ms. Havassy's report dated February 25, 2005. (CX 20 at 9-12) Dr. Rosenberg noted Claimant's educational testing scores discussed above and stated that if Claimant was employable, it would only be at a fairly basic level. (CX 22 at 11-13) However, Dr. Rosenberg opined that Claimant was clearly disabled from his previous occupation, and was also unable to engage in any alternative work in the economy due to his visual problem. (CX 22 at 13) Dr. Rosenberg agreed that without his visual impairment Claimant would probably be able to work as a cashier, checker, or security guard as Ms. Havassy indicated. However, Dr. Rosenberg found that Ms. Havassy's report made a "major omission of information" regarding the Claimant's visual impairment. (CX 22 at 11-13) Dr. Rosenberg explained that Claimant was disabled from the jobs listed in Ms. Havassy's report because they require Claimant to have the visual capacity to be oriented in his environment and to have some interaction with others. Dr. Rosenberg further explained that he did not see how Claimant could conceivably keep his head in a simple position that would not bring on dizziness, disorientation, and his eye fixation. (CX 22 at 14-15) Additionally, Dr. Rosenberg stated that he had not overlooked wearing an eye patch to alleviate Claimant's vision problem, but had been told that it had been ineffective. (CX 22 at 16-17) Dr.

Rosenberg opined that Claimant would be unable to fulfill all of the tasks that the jobs Ms. Havassy listed required and that his visual impairment was “so fundamental that it affects his daily activities.” (CX 22 at 14-15) Additionally, Dr. Rosenberg testified that “employers find capability and reliability important and if [Claimant] is having daily symptoms or even frequent symptoms, even three or four times a week, sufficient enough to render a person unable to perform work duties, that would severely impact on employability and being able to hold a job – it’s sufficient to interfere with a regular work schedule and being reliable for an employer.” (CX 22 at 23-24) Further, Dr. Rosenberg stated that he determined that Claimant’s symptoms were persistent and chronic, that employment of any kind was not a meaningful option, and that he disagreed with Ms. Havassy’s selection of jobs as she only considered that Claimant had a minimal visual problem, which did not represent the true severity level of his impairment. (CX 22 at 24, 31-32)

There is disagreement between the vocational experts as to what exactly Claimant’s physical limitations are with regard to identifying SAE. Specifically the vocational experts disagree on the physical limitations placed on Claimant by Dr. Warren in his deposition testimony of October 6, 2004. As noted above, Employer’s expert, Ms. Havassy, only imposed the physical restrictions of no heavy lifting, operating heavy machinery, or employment that would involve heights or where balance would be an issue. In deciding what Claimant’s limitation were, Ms. Havassy relied on Dr. Warren’s deposition testimony in which he stated that “[i]t would [just] be a question of seeing whether he’s able to tolerate it again. I would say yeah, he could do paperwork even if he gets a little dizzy if he is sitting in a nice chair like I’m sitting in now, he’s putting his head back, he’ll be fine. . .” and “. . . I don’t think he should be driving. . . I also wouldn’t want him doing heavy lifting. . . at anything where he was involved with heights, where balance would be an issue, driving heavy machinery.” (EX 33 at 10; CX 11 at 23-24) Ms. Havassy defended the limited nature of the restrictions she placed on Claimant, stating she felt that Dr. Warren’s deposition testimony was clear as to Claimant’s restrictions. However, Ms Havassy admitted that she had not reviewed Dr. Warren’s subsequent February 5, 2005 letter, in which he opined that Claimant was totally disabled from gainful employment.

Claimant’s expert, Dr. Rosenberg, found Claimant’s limitations to be much greater than Ms. Havassy concluded they were. Dr. Rosenberg explained that Claimant needed to keep his head in a simple position to halt the onset of dizziness, disorientation, and his abnormal eye movements and opined that he did not know of any kind of employment in which this kind of limitation could be accommodated. (CX 22 at 14-15) Dr. Rosenberg also evaluated Dr. Warren’s statement and opined that the physician was saying Claimant could try returning to some other type of employment, but was not making a clear statement as to Claimant’s employability. (CX 22 at 31-33)

I find that Dr. Rosenberg’s interpretation of Dr. Warren’s testimony regarding the physical limitations placed on Claimant are more accurate than Ms. Havassy’s interpretation. Dr. Warren spoke generally about Claimant’s limitations and even stated, “I don’t know whether he would be able to sustain – if they say you have to sit . . . and answer the phone when the phone rings, I couldn’t say it’s going to pose a threat to himself, but as to how he’s going to be able to get there, again where this occurs with change of visualization, side gaze...” (CX 11 at 23) I further credit Dr. Rosenberg’s opinion that the frequency of Claimant’s symptoms would

impair his reliability and capability as an employee. Ms. Havassy's report does not indicate whether she considered the frequency of Claimant's symptoms. Additionally, Ms. Havassy admitted that she was not aware of all of the household changes that Claimant and his wife had to make to accommodate his condition. Based on the above, I find that Ms. Havassy underestimated Claimant's physical limitations and that the restrictions imposed by Dr. Rosenberg are more rational and better supported by the medical evidence. Consequently, I give more weight to the opinion of Dr. Rosenberg in determining whether Employer has met its burden of identifying SAE for Claimant.

I have considered the jobs that Ms. Havassy identified as SAE for Claimant in the context of Claimant's impairments and the restrictions on which Dr. Rosenberg relied. Many of the jobs Ms. Havassy selected were similar in nature. Therefore, I grouped the jobs into the following categories: dispatcher, sales associate, door greeter, lot associate, cashier, counter-person, and security guard. Dr. Rosenberg also reviewed the jobs identified by Ms. Havassy and opined that none of them are suitable because Claimant "could not credibly attempt to be reliable at any number of work tasks for an employer." Dr. Rosenberg also stated that having daily or frequent symptoms would severely impact Claimant's employability as this would render him unable to perform his work duties, interfere with a regular work schedule, and hinder his ability to be reliable for an employer. (CX 22 at 23-24) I find Dr. Rosenberg's assessment of Claimant's limitations and how they would affect his employability to be reasoned and supported by the medical evidence. All of the jobs identified by Ms. Havassy are customer-service based and require Claimant to be attentive to the customers' needs. I agree with Dr. Rosenberg's assessment that Claimant's reliability as an employee is compromised by his frequently occurring symptoms. Claimant also testified that he sometimes becomes confused and disoriented in large spaces, when there is a great deal of activity around him, or when talking on the telephone. Additionally, the physical limitation of keeping his head in a simple position limits the amount of activity that Claimant can perform in a job. Lastly, Claimant has no prior employment experience in an office setting, nor is he familiar with operating computers or doing paperwork.

Based on the above, I find that Employer did not meet its burden of establishing the availability of SAE and that Claimant is totally permanently disabled.

#### 4. Timeliness of Notice of Controversion Cannot Be Determined

At the hearing the parties stipulated that they were in dispute regarding whether Employer filed a timely Notice of Controversion.

Section 14(d) requires that an employer file notice of its controversion of a claimant's right to compensation within 14 days of acquiring knowledge of the alleged injury or death. 33 U.S.C. § 914(d). See Spencer v. Baker Agric. Co., 16 BRBS 205, 209 (1984). The deadline for employer's filing is based on knowledge of the claimant's injury, not knowledge of the claim. See Jaros v. National Steel Shipbuilding Co., 21 BRBS 26, 32 (1988); Spencer, 16 BRBS at 209; Wall v. Huey Wall, Inc., 16 BRBS 340, 343 (1984). However, if an employer fails to file a timely notice of controversion, § 14(e) of the Act states:



If any installment of compensation payable without an award is not paid within 14 days after it becomes due, as provided in subdivision (b) of this section, there shall be added to such unpaid installment an amount equal to 10 per centum thereof, which shall be paid at the same time as, but in addition to, such installment, unless notice is filed under subdivision (d) of this section...

33 U.S.C. § 914(e).

Although the parties are in disagreement over this issue, neither party discussed it in their briefs. Furthermore, the Notice of Controversion that was submitted into the record was filed by Employer on July 21, 2003, but stated that it supplements the notice previously filed by Employer. (CX 2) As the Notice of Controversion previously filed by Employer was not submitted into evidence, the record is insufficient regarding this question. Therefore, I find that Claimant has not met his burden of proving that Employer's Notice of Controversion was untimely.

5. Employer is liable for past and future medical benefits related to Claimant's eye disorder pursuant to § 7 of the Act

Claimant contends that Employer is responsible for past and future medical bills for his eye condition as it is causally related to his covered employment.

Section 7(a) of the Act provides that:

The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require.

33 U.S.C. § 907(a). The medical expense requested must be both reasonable and necessary. Pernell v. Capitol Hill Masonry, 11 BRBS 532, 539 (1979). It is the claimant's burden to establish the necessity of treatment rendered for his work-related injury. See generally Schoen v. U.S. Chamber of Commerce, 30 BRBS 112 (1996); Wheeler v. Interocean Stevedoring, Inc., 21 BRBS 33 (1988); Ballesteros v. Williamette Western Corp., 20 BRBS 184 (1988).

Claimant submitted outstanding medical bills in the amount of \$5,541.47, which he stated were incurred in treating his eye condition. The outstanding bills consist of bills for prescribed medication from various pharmacies, various physician bills, and cancelled checks for insurance under COBRA. (CX 21) I find that the tests and consultations were necessary and reasonable in attempting to obtain proper diagnosis and treatment of his condition. Employer has not raised any objections to Claimant's request for payment of these medical bills. Accordingly, I find that these outstanding bills are for reasonable and necessary medical treatment for Claimant's eye condition. Therefore, Employer is responsible for their payment. Furthermore, I find Employer is liable for Claimant's appropriate future medical benefits pursuant to § 7 of the Act.

#### IV. CONCLUSION

Claimant was temporarily totally disabled from his eye condition from December 19, 2000 to March 19, 2000, and again from June 27, 2001 until October 6, 2004, and Employer is liable for compensation for such disability during that period at the maximum compensation rate. Further, Claimant was permanently totally disabled due to his eye condition from October 6, 2004 and continuing, and Employer is liable for compensation for such disability during that period at the maximum compensation rate.

Employer is also liable for Claimant's past and future medical bills for diagnosis and treatment of his eye condition.

Claimant's counsel is entitled to an attorney's fee and costs to be paid by Employer.

#### ORDER

It is ORDERED that:

1. Employer shall pay Claimant compensation for temporary total disability from December 19, 2000 to March 19, 2000, and again from June 27, 2001 until October 6, 2004, and for permanent total disability from October 6, 2004 and continuing, at the maximum compensation rate.
2. Employer shall pay Claimant for appropriate prior and future medical treatment pursuant to § 7 of the Act.
3. Claimant's counsel is entitled to attorney's fee and costs, pursuant to § 28 of the Act.
4. Claimant's counsel shall submit his application for a fee and appropriate costs within thirty (30) days of the date of this decision, as set forth in the regulations at **20 C.F.R. § 725.366(a)**, and shall serve a copy on Employer as well as Claimant. Employer and Claimant shall have thirty (30) days from the service of the application to file objections. Claimant's counsel shall have fifteen (15) days after the service of objections to respond to the objections.

A

Robert D. Kaplan  
Administrative Law Judge

Cherry Hill, New Jersey